

RENTAL HOUSING CONSTRUCTION  
PROGRAM PROPOSITION 84

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# Rental Housing Construction Program Regulations - Proposition 84

## Subchapter 15

### Article 1. General

#### Section 8075. Purpose and Scope.

- (a) This subchapter establishes the Proposition 84 Rental Housing Construction Program and implements and interprets chapter 9 (commencing with section 50735) of part 2 of division 31, Health and Safety Code, as amended by chapter 30 of the Statutes of 1988 and chapter 1103 of the Statutes of 1989.
- (b) These regulations establish procedures for the award and disbursement of loans and establish policies and procedures for use of funds allocated to the Rental Housing Construction Program by sections 53130(a)(1) and 53130(b)(1) of the Health and Safety Code.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Sections 33007.5, 50010, 50079.5, 50735, 50736, 50766, 50771.1, 50771.2, 50894, 53130, and 53133, Health and Safety Code. Sections 7260, 7261, 7262, 7264, 7264.5, 7269, 7269.1, 7272, and 7272.3, Government Code.

#### Section 8076. Definitions.

In addition to the definitions found in chapter 2 (commencing with section 50050), of part 1 of division 1 of the Health and Safety Code and subchapter 2 (commencing with section 6910) of chapter 6.5 of this Title, the following definitions shall apply to this subchapter. In the event of a conflict between the following definitions and those recited above, the following definitions prevail for the purposes of this subchapter:

- (a) "Article XXXIV approval" means the approval by local electors which must be obtained before a low rent housing project can be developed, constructed, or acquired in any city, town or county in California. This approval is required by section 1 of Article XXXIV of the Constitution of California.
- (b) "Assisted unit" means a dwelling unit, or a residential hotel unit, or a bedroom in a group home, designated for occupancy or occupied by eligible households in accordance with a Regulatory Agreement between the department and the sponsor entered into pursuant to section 8096(c).
- (c) "Debt service coverage ratio" means the ratio of (1) operating income less operating expenses to (2) debt service payments, excluding voluntary prepayments.
- (d) "Department" means the Department of Housing and Community Development.

- (e) "Director" means the Director of the Department of Housing and Community Development.
- (f) "Distributions" means the amount of cash or other benefits received from the operation of the rental housing development and available to be distributed pursuant to section 8089 to the sponsor or any party having a beneficial interest in the sponsor entity, after payment of all due and outstanding obligations incurred in connection with the rental housing development. Distributions do not include payments for debt service, voluntary loan prepayments, operations, maintenance, payments to required reserve accounts, incentive payments pursuant to section 8082, land lease payments to parties that do not have a beneficial interest in the sponsor entity, or payments for property management or other services as set forth in the Regulatory Agreement for the rental housing development.
- (g) "Eligible households" means very low-income households or other lower income households.
- (h) "Fiscal integrity" means that the total of operating income plus funds released pursuant to the Regulatory Agreement from the operating reserve account is sufficient to: (1) pay all current operating expenses, (2) pay all current debt service (excluding deferred interest), (3) fully fund all reserve accounts (other than the operating reserve account) established pursuant to the Regulatory Agreement, (4) maintain a debt service coverage ratio, where specified in the Regulatory Agreement, and (5) pay other extraordinary costs permitted by the Regulatory Agreement. The ability to pay any or all of the annual permitted distribution shall not be considered in determining fiscal integrity.
- (i) "Fund" means the Rental Housing Construction Fund.
- (j) "Group home" means a residential structure or structures, including a residential hotel, where five or more handicapped persons or households reside, share common facilities and receive direct and supportive services provided under the supervision or oversight of the local public official responsible for services to the designated tenant population, including a residential facility as defined by section 1502 of the Health and Safety Code. Intermediate care or skilled nursing facilities are not considered group homes and are not eligible for funding.
- (k) "Handicapped" means a family in which the head of the household is suffering from an orthopedic disability impairing personal mobility or a physical disability affecting his or her ability to obtain employment or a single person with such an orthopedic disability or a physical disability, where the family or person requires special care or facilities in the home. "Handicapped" also includes a family in which the head of household suffers from a developmental disability specified in subdivision (a) of section 38010 of the Health and Safety Code or a mental disorder which would render him or her eligible to participate in programs of rehabilitation or social services conducted by or on behalf of a public agency, or a single person with such a developmental disability or mental disorder.

- (l) "Household income" means the same as "gross income" as defined in section 6914 of this Title.
- (m) "Initial operating year" means the initial period of operation of the rental housing development, beginning at the time of the initial occupancy of the first assisted unit in the development and ending on the last day of the fiscal year for the development.
- (n) "Limited equity housing cooperative" means an entity defined by section 50076.5 of the Health and Safety Code. Except as otherwise provided, all requirements in this subchapter shall be applicable to limited equity housing cooperatives assisted pursuant to this subchapter.
- (o) "Lower income household" means persons or families as defined in section 50079.5 of the Health and Safety Code.
- (p) "Lower income nonassisted unit" means a dwelling unit, or a residential hotel unit, or a bedroom in a group home, other than an assisted unit, which is regulated by virtue of participation in the federal tax credit program (section 42, title 26 U.S.C.) or state tax credit program (chapter 166, California Statutes of 1990), the HUD section 202 program (section 1701q, title 12 U.S.C.), the HUD section 8 program (section 1437f, title 42 U.S.C.), or other governmental program where the occupancy and rent requirements, and the term of the occupancy and rent requirements are equal to or greater than the requirements of the federal tax credit program referenced above.
- (q) "Lower income unit" means an assisted unit designated for occupancy or occupied by any lower income household.
- (r) "Nonprofit corporation" means the same as defined in section 50091 of the Health and Safety Code.
- (s) "Operating expenses" means the amount approved by the department that is necessary to pay for the recurring expenses of the project, such as utilities, maintenance, management, taxes, and licenses, but not included debt service, required reserve account deposits, or costs for direct or supportive tenant services that tenants are not required to pay for as a condition of occupancy.
- (t) "Operating income" means all income generated in connection with operation of the rental housing development including rental income for assisted and nonassisted units, rental income for commercial space, laundry and equipment rental fees, rental subsidy payments, and interest on any accounts related to the rental housing development. "Operating income" does not include security and equipment deposits, payments for direct or supportive tenant services that tenants are not required to pay for as a condition of occupancy, or tax benefits received by the sponsor.
- (u) "Other lower income household" means persons or families as defined in section 6928 of Title 25.

- (v) "Program" means the Rental Housing Construction Program.
- (w) "Project" means a rental housing development; the development, construction and operation thereof, using program funds; and the financing structure and all agreements and documentation approved in connection therewith.
- (x) "Rent" means all mandatory charges, other than deposits, paid by the tenant for the use and occupancy of an assisted unit. In a group home, when mandatory charges include direct and supportive tenant services, "rent" means that portion of the tenant's payment required to pay for debt service, reserves required by the department, and operating expenses, excluding expenses for the mandatory direct and supportive tenant services. Direct and supportive tenant services means meals, transportation, housekeeping services, recreational and social activities, independent living training, vocational training, counseling, and similar services provided or organized by the sponsor or its agent.
- (y) "Rent-up costs" means costs incurred in connection with marketing and preparing an assisted unit for occupancy while the unit is on the housing market but not rented to its first tenant.
- (z) "Rental housing development" means a development of five or more rental or limited equity housing cooperative units on one or more sites and includes a mobilehome park with five or more mobilehome units, a group home, and a residential hotel.
- (aa) "Residential hotel" means any building which contains six or more residential hotel units where a majority of the units are residential hotel units.
- (bb) "Residential hotel unit", also referred to as a "single room occupancy" unit or an SRO, means a room used for sleeping purposes that: (1) is occupied as a primary residence, (2) lacks, in the unit itself, either or both a kitchen or bathroom, and (3) is subject to state landlord-tenant law pursuant to chapter 2 (commencing with section 1940) of Title 5 of part 4 of division 3 of the Civil Code.
- (cc) "RHCP" means the Rental Housing Construction Program.
- (dd) "Rural area" means the same as defined in section 50101 of the Health and Safety Code.
- (ee) "Single room occupancy" unit or "SRO" means the same as "residential hotel unit."
- (ff) "Very low-income household" means persons or families as defined in section 50105 of the Health and Safety Code.
- (gg) "Very low-income nonassisted unit" means a lower income nonassisted unit in which occupancy is limited to very low-income households and rents are limited to an

amount not exceeding thirty percent of the maximum income for a very low-income household, less a reasonable utility allowance.

- (hh) "Very low-income unit" means an assisted unit designated for occupancy or occupied by a very low-income household.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Sections 33007.5, 50010, 50079.5, 50735, 50736, 50766, 50771.1, 50771.2, 50894, 53130, and 53133, Health and Safety Code. Sections 7260, 7261, 7262, 7264, 7264.5, 7269, 7269.1, 7272, and 7272.3, Government Code.

## Article 2. Program Requirements

### Section 8077. Eligible Project.

- (a) To be eligible for funding, a proposed project must involve the development and construction of a new rental housing development.
- (b) Except as specified in subdivision (c), proposed projects are ineligible if construction work, excluding: (1) site improvements intended for public dedication, (2) demolition, (3) site preparation, and (4) grading, has begun prior to the date that the department awards a commitment of program funds.
- (c) Where construction work, other than that allowed pursuant to subdivision (b), has begun on the rental housing development prior to the date that the Department awards a commitment of program funds, proposed projects are eligible only under the following circumstances:
  - (1) construction has been halted, and the project property has been foreclosed upon or is in foreclosure;
  - (2) construction has been halted, and the project property has been deeded to a lender in lieu of foreclosure; or
  - (3) construction has been halted, and there is a substantial likelihood that a lender will initiate foreclosure due to the inability of the project's developer to complete construction.
- (d) Proposed projects involving the demolition of residential rental units are eligible only under the following circumstances:
  - (1) the units to be demolished are substandard, and not economically feasible to rehabilitate or if the number of assisted units in the new project is at least twice the total number of units in the demolished structures; and
  - (2) the sponsor complies with the relocation requirements set forth in section 8091.
- (e) To be eligible for funding, a proposed group home project must have the support of the local official responsible for services to the designated tenant population, such as the Mental Health Director or Regional Center Director, in the jurisdiction in which the proposed project is located, and must be designated by the local official as being an intrinsic part of that agency's established social service delivery system.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Sections 50010, 50735, and 50771.1, Health and Safety Code.

Section 8078. Eligible Sponsor.

- (a) A sponsor shall be any individual, joint venture, partnership, limited partnership, trust, corporation, limited equity housing cooperative, local public entity, duly constituted governing body of an Indian reservation or rancheria, or other legal entity, or any combination thereof which is certified by the department as meeting the requirements of subdivision (c).
- (b) A sponsor shall be organized on a for-profit, including limited profit, or nonprofit basis.
- (c) In order to be certified as eligible for funding, an applicant must be a sponsor who must:
  - (1) demonstrate ability or experience relevant to owning, developing, constructing, and operating rental housing through any of the following:
    - (A) prior ownership, development, construction and operation of rental housing;
    - (B) employment of a staff with demonstrated ability or experience owning, developing, constructing and operating rental housing; or
    - (C) contracting with a consultant or consultants with demonstrated ability or experience assisting with the owning, development, construction and operation of rental housing; and
  - (2) have site control of the proposed project property, by one of the following:
    - (A) fee title;
    - (B) a leasehold interest on the project property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit compliance with all program requirements;
    - (C) an option to purchase or lease;
    - (D) a disposition and development agreement with a public agency;
    - (E) a land sales contract, or other enforceable agreement for the acquisition of the property.



NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Sections 50735 and 50771.1, Health and Safety Code.

Section 8079. Eligible Uses of Funds.

- (a) Funds shall be used only for approved eligible costs that are incurred on the project as set forth in this section. In addition, the costs must be necessary and must be consistent with the lowest reasonable cost consistent with the project's scope and area.
- (b) Eligible categories of costs include the following:
  - (1) land acquisition;
  - (2) acquisition of projects under construction satisfying the requirements of section 8077(c);
  - (3) land lease payments;
  - (4) construction work;
  - (5) offsite improvements, such as sewers, utilities and streets, related to the rental housing development;
  - (6) onsite improvements related to the rental housing development;
  - (7) architectural, appraisal, engineering, legal and other consulting costs and fees, which are directly related to the planning and execution of the project and which are incurred through third-party contracts;
  - (8) administrative expenses pursuant to section 8085;
  - (9) rent-up costs;
  - (10) carrying costs during construction, including insurance, construction financing fees and interest, taxes, and any other expenses necessary to hold the property while the rental housing development is under construction;
  - (11) building permits and state and local fees;
  - (12) initial operating reserve balances required pursuant to section 8102;

- (13) escrow, title insurance, recording and other related costs;
  - (14) costs for items intended to assure the completion of construction, such as contractor bond premiums; and
  - (15) environmental hazard reports, surveys, and investigations.
- (c) Except where required to secure local government approvals essential to completion of the project, costs associated with the following items are ineligible for funding with program loan proceeds, and cannot be paid for from syndication proceeds or loans supported by rents from assisted units:
- (1) building and roof shapes, ornamentation, and exterior finish schemes whose costs are in excess of the typical costs of these features in modestly designed rental housing;
  - (2) fireplaces, tennis courts, and similar amenities not typically found in modestly designed rental housing;
  - (3) shake and tile roofs, custom-made windows, ceramic tile floors and counters, hardwood floors, and similar features using materials not typically found in modestly designed rental housing, except where such materials have lower lifecycle costs due to lower operating, maintenance and replacement costs.
- (d) No program funds shall be used for costs associated exclusively with nonassisted units or commercial space. If only a portion of the rental housing development consists of assisted units, the program loan amount shall not exceed the sum of the following:
- (1) the costs of all items specified in subdivision (b) associated exclusively with the assisted units;
  - (2) a share of the costs of common areas used primarily by residential tenants. This share shall be in direct proportion to the ratio between the gross floor area of the assisted units and the gross floor area of all residential units; and
  - (3) a share of the cost of other items, such as roofs, that cannot specifically be allocated to assisted units, nonassisted units, or commercial space. This share shall be in direct proportion to the ratio between
    - (A) the gross floor area of the assisted units, plus a share of the gross floor area of common areas used primarily by residential tenants in direct proportion to the ratio between the gross floor area of the assisted units and the gross floor area of all units; and
    - (B) the total gross floor area of the structure or structures.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Sections 50735, 50736, 50771.1, and 53133, Health and Safety Code.

Section 8080. Type and Term of Loan.

- (a) Sponsors shall elect to receive program financing as either combination construction and permanent loans or permanent loans only.
- (b) The initial term of the loan shall be 40 years, commencing on the date of initial occupancy of an assisted unit.
- (c) Upon request by the sponsor, the department shall approve an initial loan term longer than that set forth in subdivision (b) provided that such longer term does not exceed the useful life of the rental housing development as determined by the department utilizing assessments provided by professionals from the construction and real estate industries, such as the conclusions of an appraiser or a structural engineer.
- (d) Upon request by the sponsor, the department may approve a ten-year extension of the loan term if the department determines both of the following are met:
  - (1) The sponsor is in compliance with the Regulatory Agreement and agrees to continue to comply during the extended term; and
  - (2) The extension is necessary to continue operations consistent with program requirements.
  - (3) The department may condition the extension on such terms as it deems necessary to ensure compliance with the requirements of this program.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Sections 50766 and 50771.1, Health and Safety Code.

Section 8081. Maximum Loan Amounts.

The loan amount is limited to the total amount of eligible costs required, when considered with other available financing and assistance, in order to achieve all of the following:

- (a) to enable the development and construction of the rental housing development;
- (b) to ensure that rents for assisted units are in accordance with program requirements;
- (c) to operate in compliance with all other program requirements; and
- (d) to allow a debt service coverage ratio in an amount sufficient to satisfy the requirements of other lenders providing financing for the rental housing development, but not to exceed 115 percent.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Section 50771.1, Health and Safety Code.

Section 8082. Interest Rate and Loan Repayments.

- (a) Loans shall bear simple interest of three percent per annum on the unpaid principal balance. Interest shall accrue from the date that funds are disbursed by the department to or on behalf of the sponsor.
- (b) Accrued interest shall be payable out of operating income remaining after payment of approved operating expenses, debt service on other loans, reserve deposits, and sponsor distributions. Such interest, to the extent it is available, shall be payable to the department commencing on the last day of the initial operating year and continuing on each anniversary date thereafter until the loan is paid in full.
- (c) Upon request by the sponsor, at the time of application or any time thereafter, the department shall approve the deferral of accrued interest for such periods and subject to such conditions as will enable the sponsor to maintain affordable rents, maintain the fiscal integrity of the project and pay allowable distributions pursuant to section 8089.
- (d) Upon request by the sponsor, the department shall permit payment of a portion of the program loan principal annually following approval of the annual report required pursuant to section 8101, provided that the resulting additional debt service will not jeopardize the fiscal integrity of the project or the sponsor's ability to maintain rents in accordance with program requirements. The department shall approve a schedule for such principal payments at loan closing or any time thereafter, subject to the following:
  - (1) The schedule shall be based on actual or projected net cash flow which shall be calculated by subtracting from operating income the sum of the amounts necessary for project fiscal integrity plus the amount of allowable distributions pursuant to section 8089.
  - (2) The schedule may include provision for incentive payments to the sponsor.

Such payments to the sponsor shall be in addition to the sponsor's permitted distribution pursuant to section 8089, and shall be allowed only after payment in full of all interest, including deferred interest, accrued on the program loan. The amount of such payments to the sponsor for a particular year shall not exceed the lesser of

    - (A) the amount of payments applied to the program loan principal for that year; or
    - (B) twice the amount of sponsor distributions allowed pursuant to section 8089(b)(1), where this subdivision is applicable, or twenty-four

percent of the sponsor's actual investment in the assisted units, where it is not.

- (e) Commencing thirty years from the date of the loan, the sponsor shall make annual payments of interest and principal as follows:
  - (1) If the loan term, including any extensions, is fifty years or more, the amount of such payments shall not be less than one-half of net cash flow until the loan is paid in full. Net cash flow shall be calculated as described in subsection
  - (2) If the loan term, including any extensions, is less than fifty years, the amount of such payments shall be the lesser of
    - (A) the full amount of net cash flow, calculated as described in subsection (e)(1); or
    - (B) that amount required to fully amortize the loan during its remaining term.
- (f) All program loan payments shall be applied first to interest and second to principal.
- (g) The total amount of the outstanding principal and interest, including deferred interest, shall be due and payable in full to the department at the end of the loan term including any extension granted by the department.
- (h) Upon request by the sponsor, and providing that any additional resulting debt service will not jeopardize the fiscal integrity of the project or the sponsor's ability to maintain rents in accordance with program requirements, the department may establish an interest rate for the program loan exceeding three percent.
- (i) For purposes of this section only, and for projects where distributions from nonassisted units are not limited, in accordance with section 8089(b)(2), operating income shall not include income attributable to nonassisted units or commercial space, and fiscal integrity shall be evaluated without consideration of income or expenses attributed to nonassisted units or commercial space.

NOTE: Authority cited: Sections 50771.1 and 50771.2, Health and Safety Code. Reference: Sections 50771.1 and 50771.2, Health and Safety Code.

#### Section 8083. Appraisal and Market Study Requirements.

- (a) As a condition of funding, the department shall require an appraisal or market study, or both, where required to achieve the following objectives:
  - (1) To establish a market value for the land to be purchased or leased as part of the project for purposes of evaluating the reasonableness of the purchase price

or lease terms pursuant to section 8079 and determining sponsor equity pursuant to section 8084.

- (2) To assist with establishing reasonable costs for other development cost categories pursuant to section 8079.
  - (3) To assess fiscal integrity.
- (b) Any appraisal required by the department shall be prepared at the sponsor's expense by an individual who
- (1) has the knowledge and experience necessary to appraise income property competently;
  - (2) is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible appraisal; and
  - (3) in reporting the results of the appraisal, communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true value and condition of the property.
- (c) Any market study required by the department shall be prepared at the sponsor's expense by an individual who:
- (1) has the knowledge and experience necessary to conduct a market study for rental property competently;
  - (2) is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible market study; and
  - (3) in reporting the results of the market study, communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true value and condition of the property.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Section 50771.1, Health and Safety Code.

#### Section 8084. Minimum Equity Requirements.

- (a) Sponsors of projects where more than 80 percent of all units are assisted units must provide equity in an amount not less than ten percent of total development costs, excluding costs of syndication. Sponsors of other projects shall not be subject to any minimum equity requirement.
- (b) Equity, for purposes of this subdivision, includes cash and land, whether contributed by the sponsor from its own resources or granted to the sponsor by another party.

Equity also includes other items of monetary value contributed by the sponsor and applied towards project costs, including

- (1) personal property;
- (2) the capitalized value of any exemption from local taxes on real property. The amount of the exemption shall be established by the department prior to loan closing based on its estimate of the probable assessed value of the rental housing development and its interpretation of state law governing eligibility for exemptions, as set forth in Revenue and Taxation Code section 214 et seq.; and
- (3) the value of any administrative expenses not funded by the program, but which would have been eligible for funding pursuant to section 8085(d).

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Section 50771.1, Health and Safety Code.

#### Section 8085. Administrative Expenses.

- (a) Administrative expenses are those expenses incurred by the sponsor related to the planning and execution of the project prior to initial occupancy. Such expenses include, but are not limited to the following:
  - (1) salaries, wages, and related costs of the sponsor's staff engaged in the planning and execution of the project, including general legal services, accounting and auditing relating to the sponsor's operations, and financial packaging;
  - (2) travel costs and other general overhead costs which are attributable to the project;
  - (3) expenses for sponsor's administrative services performed and paid for under third-party contracts.
- (b) Administrative expenses do not include those legal, architectural, engineering, or financial fees which are directly related to the planning and execution of the project and which are incurred by the sponsor through third-party contracts eligible for funding pursuant to section 8079(b)(7).
- (c) Sponsors seeking program funds for administrative expenses shall include in their application a statement of administrative expenses incurred to date, and a budget for anticipated administrative expenses. The statement and budget shall include sufficient detail and explanation to permit the department to determine eligibility and reasonableness of the expenses. The department shall include in the loan amount those administrative expenses shown in the statement and anticipated budget provided it determines that those expenses are reasonable and necessary considering the nature and scope of the project.

- (d) Administrative expenses in amounts equal to or less than the maximum amounts shown in the following schedule shall be deemed reasonable and necessary upon certification by the sponsor that they have been incurred.

<i>Approved Program Loan Amount</i>	<i>Maximum Administrative Expenses</i>
Up to \$500,000	5% of the approved program loan amount
Over \$500,006	\$25,000 plus 1% of the approved program loan amount over \$500,000, up to a maximum of \$50,000

- (e) The department shall not fund administrative expenses in excess of 10 percent of the approved loan amount unless the sponsor can demonstrate to the department's satisfaction that costs in excess of this limitation are the result of expenses for architectural, engineering, and legal services, which would otherwise qualify for funding as consultant services pursuant to section 8079(b)(7).

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Section 50771.1, Health and Safety Code.

Section 8086. Occupancy Requirements.

- (a) In each rental housing development assisted by the program, and for the full term of the program loan, the following requirements shall apply:
- (1) Not less than thirty percent of all units shall be assisted units.
  - (2) Not less than two-thirds of the assisted units shall be very low-income units.
- (b) Assisted units shall not differ substantially in size or amenity level from nonassisted units with the same number of bedrooms, and lower-income units shall not differ from very low-income units. Assisted units shall not be segregated from nonassisted units, and very low-income units shall not be segregated from lower-income units. Within these limits, sponsors may change the designation of a particular unit from assisted to nonassisted, or lower income to very low-income, and vice versa, over time.
- (c) The number, size, type, and amenity level of lower-income and very low-income units shall not be fewer than the number nor different from the size, type and amenity level described in the Regulatory Agreement for the full loan term.

NOTE: Authority cited: Section. 50771.1, Health and Safety Code. Reference: Sections 50736 and 50771.1, Health and Safety Code.



Section 8087. Tenancy Standards.

- (a) Sponsors shall select only eligible households as tenants of assisted units, and shall annually verify household income and size to determine continued eligibility. As part of the management plan required by section 8100(d), the sponsor shall develop a tenant selection plan for assisted units which shall be subject to the approval of the department: Any change to the plan shall be subject to the approval of the department. The plan shall include the following:
  - (1) an affirmative marketing plan for eligible households which shall include policies and steps to ensure equal access to all housing units in the rental housing development for all persons in any category protected by federal, state or local laws governing discrimination. Where a significant number of persons in the area of the rental housing development have limited fluency in English, the plan shall require that publications implementing the affirmative marketing plan be provided in the native language of those persons.
  - (2) reasonable criteria for selection or rejection which shall not discriminate in violation of any federal, state or local laws governing discrimination, or any other arbitrary factor.
  - (3) prohibition of local residency requirements.
  - (4) tenant selection procedures that include the following requirements:
    - (A) selection of tenants based on order of application, lottery or other reasonable method approved by the department;
    - (B) notification to tenant applicants of eligibility for residency and, based on turnover history, for units in the rental housing development, and the approximate date when a unit may be available;
    - (C) notification of tenant applicants of ineligibility to occupy an assisted unit and the reason for the ineligibility and their right to appeal this determination pursuant to section 8087(e); and
    - (D) maintenance of a waiting list of eligible households applying to occupy assisted units and if applicable, distinguish between lower- and very low-income applicants.
  - (5) tenant occupancy standards that shall be used by the sponsor upon both initial occupancy and recertification to determine a tenant's unit size, as follows:

<i>Unit Size</i>	<i>No. of Persons in Household</i>	
	<i>Minimum</i>	<i>Maximum</i>
<i>SRO</i>	<i>1</i>	<i>2</i>
<i>0-BR</i>	<i>1</i>	<i>2</i>
<i>1-BR</i>	<i>1</i>	<i>3</i>
<i>2-BR</i>	<i>2</i>	<i>5</i>
<i>3-BR</i>	<i>4</i>	<i>7</i>
<i>4-BR</i>	<i>6</i>	<i>9</i>
<i>5-BR</i>	<i>8</i>	<i>11</i>

- (A) Flexibility for assignment by a sponsor to a different sized unit is permitted if the sponsor reasonably determines that special circumstances warrant such an assignment and the reasons are documented in the tenant's file.
- (B) If at the time of recertification, the tenant's household size has changed and no longer meets the occupancy standards pursuant to this subdivision, tenant household shall be required to move to the next available appropriately sized unit pursuant to this subdivision.
- (b) Upon prior written approval by the department, the sponsor may set income limits for lower income units at a level below the upper limit for lower-income households.
- (c) In limited equity housing cooperatives, share purchase terms for assisted units shall be limited as follows:
  - (1) the total share purchase price for the initial occupant shall be not less than two months carrying costs and not more than five percent of the prorated development cost of the unit.
  - (2) share appreciation upon resale shall be at a rate approved by the department not to, exceed eight percent of the paid-in portion of the share purchase price per annum.
  - (3) for lower-income households, the required cash contribution to be applied towards the total share purchase price upon initial occupancy shall not exceed 2.5 percent of the prorated development cost of the unit, plus allowed appreciation. For very low-income households, the required cash contribution shall not exceed ten percent of the household's income over the twelve months prior to occupancy.

- (4) the sponsor may loan members of the cooperative the difference between the total share purchase price and the member's initial cash contribution. The terms and conditions of such loans shall be subject to department approval.
- (d) The sponsor shall submit for department approval the form of the rental or occupancy agreement for assisted units prior to its use. The form shall include the following:
  - (1) provisions requiring good cause for termination of tenancy. One or more of the following constitutes "good cause":
    - (A) failure by the tenant to maintain eligibility under the program;
    - (B) material noncompliance by the tenant with the lease, including one or more substantial violations of the lease or habitual minor violations of the lease which
      - 1. adversely affect the health and safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities;
      - 2. substantially interfere with the management, maintenance, or operation of the rental housing development;
      - 3. result from the failure or refusal to pay, in a timely fashion, rent or other permitted charges when due: Failure or refusal to pay in a timely fashion is a minor violation if payment is made during the three-day notice period;
    - (C) material failure by the tenant to carry out obligations under state or local law; or
    - (D) subletting, by the tenant, of all or any portion of the assisted unit;
    - (E) any other action or conduct of the tenant constituting significant problems which can be reasonably resolved only by eviction of the tenant, provided that the sponsor has previously notified the tenant that the conduct or action in question would be considered cause for eviction. Examples of action or conduct in this category include the refusal of a tenant, after written notice, to accept reasonable rules or any reasonable changes in the lease or the refusal to recertify income, or household size;
  - (2) a provision requiring that the facts constituting the grounds for any eviction be set forth in the notice provided to the tenant pursuant to state law;
  - (3) notice of grievance procedures for hearing complaints of tenants and appeal of management action; and

- (4) a requirement that the tenant annually recertify household income and size.
- (e) The sponsor shall adopt an appeal and grievance procedure to resolve grievances filed by tenants and appeals of actions taken by sponsors with respect to tenants' occupancy in the rental housing development and prospective tenants' applications for occupancy.
  - (1) the appeal and grievance procedure shall be included in the sponsor's management plan described in section 8100(d) and shall, at a minimum, include the following:
    - (A) a requirement for delivery to each tenant and applicant of a written copy of the appeal and grievance procedure;
    - (B) procedures for informal dispute resolution;
    - (C) a right to a hearing before an impartial body, which shall consist of one or more persons, with the power to render a final decision on the appeal or grievance;
    - (D) procedures for the conduct of such hearing and the appointment of the impartial hearing body. The procedures shall include the right to present evidence without regard to formal rules of evidence, the right to be represented by any other person and the right to a written decision from the hearing body. The decision of the hearing body shall be based solely on evidence presented at the hearing; and
    - (E) a requirement that the sponsor extend any time period imposed pursuant to a formal eviction procedure, including any filing in a court of competent jurisdiction, during the pendency of the hearing.
  - (2) Neither utilization of nor participation in any of the appeal and grievance procedures shall constitute a waiver of or affect the rights of the tenant, prospective tenant, or sponsor to a trial de novo or judicial review in any judicial proceeding which may thereafter be brought in the matter.
- (f) If, at the time of recertification, the tenant's household income exceeds the upper limit for lower-income households, the tenant's lease for the unit as an assisted unit shall terminate six months after the date of recertification.
  - (1) In rental housing developments containing nonassisted units, the tenant shall have the right of first refusal for any available nonassisted unit of a size consistent with the occupancy standards set forth in section 8087(a)(5). This right shall begin upon recertification and shall expire upon termination of the tenant's lease of the assisted unit.

- (2) If the tenant provides to the sponsor additional evidence which establishes income eligibility prior to the expiration of the tenant's lease, the tenant's lease shall not be terminated.
- (3) The sponsor may approve one additional six-month extension of the lease if the project:
  - (A) is located in a market area where the vacancy rate for rental housing is less than five percent; and
  - (B) is located in an area where the Fair Market Rent exceeds the average of the Fair Market Rents for all metropolitan statistical areas in California. For purposes of this subsection, "Fair Market Rent" means the most current fair market rent for existing housing for two-bedroom units, as published annually in the "Federal Register" by the U.S. Department of Housing and Urban Development pursuant to section 8(c)(1) of the United States Housing Act of 1937.
- (4) If the assisted unit is subject to state or federal rules governing low-income housing tax credits, as referenced in section 10300, Title 4, California Code of Regulations, those eligibility provisions shall govern continued eligibility for occupancy.
- (5) In a limited equity housing cooperative where the household income of a cooperative member occupying an assisted unit exceeds the upper limit for lower income households, the member shall not be required to vacate the assisted unit.
  - (A) After recertification and determination of ineligibility, the sponsor shall immediately notify the member that the carrying charge will increase to a market rate payment six months after said notification. Market rate payment shall be the carrying charge paid for a comparable nonassisted unit, without an allowance for utilities, or where there are no comparable nonassisted units, the rent charged for comparable units in the area. This market rate payment shall be subject to department approval.
  - (B) The next available membership share for occupancy in a comparable unit shall be sold to an eligible household until the mix between lower- and very low-income units required by the Regulatory Agreement is achieved.
- (6) If the tenant's income exceeds the limit for lower-income units established by the sponsor pursuant to subdivision (b), but remains below the lower-income limit, that fact alone shall not be cause for termination of the tenant's lease or for requiring the tenant to vacate their unit.

- (g) If the income of a household residing in a very low-income unit changes from very low-income to other lower-income at the time of recertification, the following shall apply:
- (1) The household shall not be required to vacate the unit;
  - (2) The sponsor shall charge rent that does not exceed the current rent allowed for any comparable lower-income unit pursuant to section 8088, or where there are no such units, the maximum rent which would be allowed pursuant to section 8088;
  - (3) The sponsor shall designate the unit as a lower-income unit; and
  - (4) The sponsor shall designate the next available comparable assisted unit as a very low-income unit until the mix between lower-income and very low-income units required by the Regulatory Agreement is achieved.
  - (5) In a limited equity housing cooperative, where the tenant member in a very low-income unit becomes an other lower-income household, the sponsor shall comply with the provisions of subdivisions (g)(1) through (g)(4).

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Sections 33007.5, 50010, 50079.5, 50736, 50771.1, and 50894, Health and Safety Code.

Section 8088. Rent Standards.

- (a) The department shall establish initial rents for assisted units in each project in accordance with the tables in section 6932 and the following:
- (1) At the time of the initial occupancy of a unit, rents for very low-income units, and for units in residential hotels and group homes, shall not exceed 30 percent of 35 percent of area median income, divided by 12, adjusted by unit size pursuant to subdivision (a)(3), and with an allowance for utility costs pursuant to subdivision (a)(4). The unit size adjustment in subdivision (a)(3) is employed by identifying the size of the unit for which rent must be determined and reading across to determine the applicable household size for that unit. Area median income is determined by selecting from the tables provided in section 6932 for the county in which the unit is located, the amount of income provided as the very low-income standard for the "number of persons in the family," which equates with the "applicable household size" identified in subdivision (a)(3).
  - (2) Except for residential hotel units and rooms in group homes, at the time of the initial occupancy of a unit, rents for lower-income units shall not exceed 30 percent of 60 percent of area median income, divided by 12, adjusted by unit size pursuant to subdivision (a)(3), and with an allowance for utility costs pursuant to subdivision (a)(4). The unit size adjustment in subdivision (a)(3) is

employed by identifying the size of the unit for which rent must be determined and reading across to determine the applicable household size for that unit. Area median income is determined by selecting from the tables provided in section 6932 for the county in which the unit is located, the amount of income provided as the lower-income standard for the "number of persons in the family," which equates with the "applicable household size" identified in subdivision (a)(3).

- (3) Maximum rent calculated pursuant to (a)(1) and (a)(2) above shall be adjusted by unit size as follows:

<i>Unit Size</i>	<i>Applicable Household Size to Determine Rent Limit</i>
residential hotel unit or 0 bedroom	1 person
group home bedroom with one occupant	1 person
group home bedroom with two occupants	1 person (Maximum rent shall be twice the maximum rent for bedrooms with one occupant.)
1 bedroom	2 persons
2 bedrooms	3 persons
3 bedrooms	4 persons
4 bedrooms	6 persons
5 bedrooms	8 persons

- (4) The maximum rent to be charged to tenants shall be determined by deducting from the maximum amounts calculated pursuant to (a)(1), (a)(2) and (a)(3) a utility allowance for the appropriate unit size. Where a tenant does not directly pay for utilities, the utility allowance deduction shall be zero. The utility allowance shall be the allowance for monthly utility costs made or approved by the U.S. Department of Housing and Urban Development pursuant to 24 CFR §813.102. In order to obtain the current utility allowances for cities and unincorporated areas located in the following counties, please contact the Department of Housing and Community Development, Attention: Housing Assistance Program, Post Office Box 952054, Sacramento, CA 94252-2054 or phone (916) 324-7696:

Amador	Calaveras	Colusa	El Dorado
Glenn	Inyo	Lassen	Lake
<u>Mendocino</u>	<u>Modoc</u>	<u>Mono</u>	<u>Nevada</u>
Placer	Sierra	Siskiyou	Trinity
Tuolumne			

Utility allowances for the balance of cities and unincorporated areas in California not located in the above noted counties may be obtained by contacting the Housing Authority established for that county pursuant to section 34240 of the Health and Safety Code.

- (5) Upon demonstration by the sponsor that the amount of utility cost per unit anticipated for the proposed project differs from the amount of the utility allowance per unit derived pursuant to the preceding subdivision, the department shall allow as a utility allowance use of the utility cost per unit demonstrated by the sponsor. The demonstration by the sponsor shall consist of the submittal of actual utility usage cost data per unit for an existing project constructed within the last five years; of the same type of construction as the proposed project; and with the same type of tenant population as the proposed project.
  - (6) As used in this section "rent" does not include any payment to a sponsor under Section 8 of the United States Housing Act of 1937 or any comparable federal or state rental assistance program.
- (b) After the initial operating year, rents in assisted units may be adjusted no more often than annually. The amount of adjustment for assisted units shall be in accordance with the following:
- (1) Rents may be increased at a rate not to exceed the most recent annual average percentage change in the Western Region for residential rents for all urban consumers as published by the United States Department of Labor, \*-, Bureau of Labor Statistics in the monthly publication, "CPI Detailed Report, "multiplied by the ratio of previous year's budgeted operating expenses attributed to assisted units plus required reserves attributed to assisted units to the previous year's budgeted operating income attributed to assisted units.
  - (2) In addition to the rent increase allowed pursuant to subdivision (b)(1), rents shall be increased by an amount not to exceed the amount necessary to increase the operating income to cover changes in debt service:
    - (A) on an adjustable rate mortgage approved by the department as part of the project; or
    - (B) resulting from a refinancing approved by the department and required to maintain fiscal integrity.



- (3) Notwithstanding the provisions of subdivisions (b)(1) and (b)(2), rents shall be decreased, or the amount of the otherwise allowable increase reduced, if there is a reduction in the amount of required payments on an adjustable rate mortgage on the project due to a decrease in the interest rate for that mortgage. The aggregate monthly amount of this rent decrease, or reduction in an otherwise allowable increase, shall be equal to the amount of the monthly payment reduction attributable to assisted units;
- (4) Any rent adjustment at the end of the initial operating year shall be prorated based on the length of the initial operating year.
- (c) The sponsor shall be allowed to implement a greater rent increase if the sponsor can demonstrate, to the department's satisfaction, that the increase is necessary to pay for unusual or unforeseeable increases in costs related to the assisted units and to preserve fiscal integrity. The sponsor shall not receive a greater rent increase on the grounds that fiscal integrity is threatened by a shortfall in income, unanticipated expenses or other financial problems attributable to commercial space or nonassisted units.
- (d) Any allowable rent increase or portion thereof not implemented by the sponsor in any given year shall not be accumulated for implementation in subsequent years.
- (e) Where the assisted units are rent restricted as a condition of the low-income housing tax credit or other state and federal rent subsidy programs, the initial rent for assisted units and subsequent rent increases shall be the lower of those permitted under subdivisions (a), (b), or (c), or those permitted under the applicable tax credit or other programs.
- (f) The sponsor shall submit requests for rent adjustments pursuant to subdivision (c) above as part of the annual operating budget pursuant to section 8102.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Section 50771.1, Health and Safety Code.

#### Section 8089. Limits on Distributions.

- (a) A nonprofit corporation shall be limited to an annual distribution on the sponsor's actual investment in the entire project in an amount not to exceed eight percent per annum.
- (b) A for-profit sponsor shall elect, prior to loan closing, to be limited in accordance with one of the following options:
  - (1) The sponsor shall be limited to an annual distribution on the sponsor's actual investment in the entire project in an amount not to exceed eight percent per annum; or

- (2) The sponsor shall receive no distribution from assisted units, and shall not be subject to any limitations on the amount of the distribution it receives from nonassisted units.
- (c) A sponsor may not accumulate distributions from year to year. A sponsor may deposit all or a portion of the amount permitted for distributions into a project account for distribution in subsequent years. Such future distributions shall not reduce the otherwise permitted distribution in those subsequent years.
- (d) Actual investment, for the purposes of this section, includes cash and the market value of property contributed to the project by the sponsor. For projects receiving state or federal low-income housing tax credits, the amount of actual investment recognized by the department for the purpose of calculating allowable distributions shall not exceed fifteen percent of total project development costs. Actual investment does not include any payments of project funds to the sponsor. In syndicated projects, actual investment shall be calculated net of the costs of syndication, such as the syndicator's fee and syndication-related legal expenses.
- (e) In its initial operating budget, the sponsor shall demonstrate to the department the amount of the sponsor's actual investment on which the allowable distribution will be calculated. The actual investment amount shall be increased in subsequent budgets upon a showing of additional actual investment advanced by the sponsor.
- (f) Distributions shall be permitted only after the sponsor submits a complete annual report and operating budget and the department determines that the report and budget demonstrate compliance with all program requirements for the applicable year. Circumstances under which no distributions shall be made include:
  - (1) when written notice of default has been issued by any entity with an equitable or beneficial interest in the rental housing development;
  - (2) when the department determines that the sponsor has failed to comply with the department's written notice of any reasonable requirement for proper maintenance or operation of the rental housing development;
  - (3) if all currently required debt service and operating expenses have not been paid;
  - (4) if the replacement reserve account or any other reserve accounts are not fully funded pursuant to section 8102 and the Regulatory Agreement.
- (h) Distributions attributed to income from commercial space shall not be subject to limits pursuant to this section.
- (i) When operating income is greater than approved operating expenses, debt service, scheduled reserve deposits, approved prepayments, approved annual distributions, and any other disbursements approved by the department, then the department shall

require that such excess be paid into the Emergency Reserve Account established pursuant to section 8103. For purposes of calculating the amount of excess funds pursuant to this subdivision, operating income and expenses shall not include income or expenses from commercial space, or, where the sponsor elects to have their return limited pursuant to subdivision (b)(2), from nonassisted units. .

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Section 50771.1, Health and Safety Code.

#### Section 8090. Syndication.

- (a) In the event that the project is syndicated during the term of the program loan for the purpose of receiving federal or state low income housing tax credits, the total amount of syndication proceeds retained by the sponsor, or any affiliates of the sponsor, in the form of fees or payments of any kind, shall not exceed 25 percent of net syndication proceeds. Net syndication proceeds shall be calculated by deducting from gross syndication proceeds all reasonable and ordinary costs of syndication, including accounting, printing, financial consultant, legal, interest and fees on gap financing used to pay development costs approved by the department, syndicator fee, and government fees associated with creating a limited partnership and securing tax credit allocations. ..
- (b) Not less than 75 percent of any available net syndication proceeds shall be applied toward project development costs approved by the department, exclusive of any fees or payments retained by the sponsor or its affiliates, and, then, to the extent that funds are available, toward payment of program loan interest and principal.
- (c) Upon demand by local public agencies that have contributed or loaned funds towards project development costs, net syndication proceeds that would otherwise be applied towards program loan payments may be allocated among these agencies and the department in amounts in direct proportion to the ratio between the amount of their contributions or loans and the amount of the program loan.

NOTE: Authority cited, Section 50771.1, Health and Safety Code. Reference: Section 50771.1, Health and Safety Code.

#### Section 8091. Relocation Requirements.

- (a) The sponsor of a project resulting in displacement of residential tenants shall be solely responsible for providing the assistance and benefits set forth in this section, and shall agree to indemnify and hold harmless the department from any liabilities or claims for relocation related costs.
- (b) All tenants in occupancy in a property who are permanently displaced as a direct result of the development of the project shall be entitled to relocation benefits and assistance as provided in Sections 7260, 7261, 7262, 7264, 7264.5, 7269, 7269.1, 7272, and 7272.3 of the Government Code. Displaced tenants who are not eligible

households under this program shall be provided relocation benefits and assistance from funds other than program funds.

- (c) The sponsor shall prepare a relocation plan in conformance with the provisions of section 6038(b) of this Title based on the scope of the project and the extent of anticipated displacement. The relocation plan shall be subject to the review and approval of the department prior to the disbursement of program funds.
- (d) All eligible households who are permanently displaced as a direct result of the development of the project shall be entitled, upon initial occupancy of the rental housing development, to occupy assisted units meeting the tenant occupancy standards set forth in section 8087.
- (e) All ineligible households who are permanently displaced as a direct result of the development of the project shall be entitled, upon initial occupancy of the rental housing development, to occupy any available nonassisted units.
- (f) Notwithstanding the preceding subdivisions, tenants who are notified in writing prior to their occupancy of an existing unit that such unit may be demolished as a result of funding provided under the program shall not be eligible for relocation benefits and assistance under this section. The form of any notices used for this purpose shall be subject to department approval.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Sections 7260, 7261, 7262, 7264, 7264.5, 7269, 7269.1 7272, and 7272.3, Government Code. Sections 50771.1 and 53133, Health and Safety Code.

#### Section 8092. Construction Requirements.

- (a) The department shall review and underwrite project plans and specifications to ensure the following objectives:
  - (1) The rental housing development shall have a minimum useful life at least equal to term of the loan;
  - (2) Maintenance, repair, and replacement costs shall be minimized during the useful life of the rental housing development through use of durable, low maintenance materials and equipment and design features that minimize wear and tear.
  - (3) Operating costs shall be minimized during the useful life of the rental housing development.
  - (4) Tenant security shall be enhanced through features such as those designed to prevent or discourage unauthorized access and to allow for ready monitoring of public areas.

- (5) Unit sizes, amenities, and general design features shall not exceed the standard for new developments rented at or below the market rent in the area of the project, and unit density shall not be substantially less than the average for new developments with such units.
- (b) The sponsor shall ensure that the construction work for the project shall be performed in a competent, professional manner at the lowest reasonable cost consistent with the project's scope, design and locality and not in excess of the total funds available. The sponsor may demonstrate the reasonableness of the proposed cost by soliciting written bids based on a bid package distributed to potential contractors located in the general area of the rental housing development or by the use of other methods which adequately demonstrate to the department's satisfaction that the costs are reasonable. Such bid package or other method shall include at a minimum:
  - (1) complete plans and specifications for the work; and
  - (2) a full description of the program requirements for construction, including the required provisions of the construction contract.
- (c) The sponsor shall enter into a written contract with the selected contractor. The contract shall be subject to the prior approval of the department to determine compliance with program requirements.
- (d) The construction contract shall be a completely integrated agreement containing all the understandings, covenants, conditions and representations between the parties and, at a minimum, contain provisions which:
  - (1) require that the contractor complete the work in accordance with the plans and specifications approved by the department and applicable local, state and federal laws, regulations and building codes and standards;
  - (2) require the contractor to proceed with and complete the work in accordance with the schedule for work approved by the department;
  - (3) specify a total contract price consistent with the project budget approved by the department;
  - (4) provide for a method of payment to the contractor consistent with program requirements which shall include progress payments and retentions;
  - (5) require that the contractor provide a payment bond securing payment to persons providing goods or services to the project and a performance bond securing faithful completion of the work. Each bond shall be in an amount equal to 100 percent of the total contract price and include the department as a dual obligee. The department shall waive the payment and performance bond requirements, or reduce their scope, upon the sponsor's either;

- (A) providing alternative security for payment and performance under the construction contract which is substantially equivalent to the bond requirements; or
  - (B) demonstrating that the bonds, or the full amount thereof, are not necessary to protect the interests of the department and ensure completion of the work;
- (6) permit the sponsor and the department and their designated agents and employees the right to inspect the project site and all books, records and documents maintained by the contractor in connection with work;
  - (7) require the contractor to provide insurance coverage consistent with the program requirements and other applicable law;
  - (8) obligate the contractor to warrant the work for a period of not less than one year;.
  - (9) require that the contractor pay all amounts when due for labor, work performed under subcontract, or materials, supplies and equipment provided to the project;
  - (10) provide for the assignment of the construction contract to the department upon sponsor's breach of the Development Agreement;
  - (11) require that the contractor comply with state prevailing wage law, as set forth in Labor Code Section 1720 et seq., where program funds are provided as construction financing.
  - (12) include such special conditions applicable to the construction contract as may have been imposed in connection with the department's approval of the project for funding.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Section 50771.1, Health and Safety Code.

### Article 3. Application Procedures

#### Section 8093. Application Process.

- (a) The department shall issue a Notice of Funding Availability (NOFA) which specifies the schedule for rating and ranking applications and awarding funds every two months, the amount of funds available in each bimonthly cycle, application requirements, the allocation of rating points, and the general terms and conditions of funding commitments. Applications in response to each NOFA will be accepted on a continuous basis.
- (b) Within 45 days of the receipt of an application, the department shall provide the applicant with written notice indicating whether the application is complete pursuant to section 8094 and eligible for rating and ranking pursuant to section 8095(a).
  - (1) If the application is not complete, but has not been determined to be ineligible for rating and ranking, the notice shall specify the information or documentation necessary to complete the application. Within 15 days of the receipt of any additional information or documentation from the applicant, the department shall provide the applicant with written notice indicating whether the additional information or documentation is sufficient to determine that the application is complete.
  - (2) If the application is not eligible for rating and ranking, the notice shall provide an explanation of the reasons for this determination.
- (c) Funding decisions shall be based on a bimonthly rating and ranking of applications determined to be eligible for rating and ranking pursuant to subdivision (b).
  - (1) An application must be received by the department and determined to be complete and eligible for rating and ranking at least 45 days prior to the completion of the next scheduled rating and ranking to be assured of consideration in that rating and ranking.
  - (2) Within 15 days following the completion of each bimonthly rating and ranking, the department shall provide each applicant with a written notice indicating whether their application has been approved for funding. If an application is not approved, the notice shall include an explanation of the rating and ranking and the reasons for the disapproval.
- (d) Projects selected for funding shall be approved at loan amounts, terms, and conditions specified by the department.

- (e) In each fiscal year, not less than 20 percent of all program funds loaned shall be allocated to rural areas. In each fiscal year, elderly or physically handicapped households shall be allocated not less than 20 percent, nor more than 30 percent, of the assisted units provided by program funds. If necessary to satisfy these distribution requirements, the department shall do the following:
  - (1) issue a special NOFA for rural projects, or for projects with units available for occupancy by elderly or physically handicapped households;
  - (2) award bonus points to rural projects, or for projects with units available for occupancy by elderly or physically handicapped households;
  - (3) reserve a portion of funds specified in the NOFA for rural projects, or for projects with units available for occupancy by elderly or physically handicapped households.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Sections 50736 and 50771.1, Health and Safety Code.

#### Section 8094. Application Requirements.

- (a) Application shall be made on form HCD 800, "Loan Application Rental Housing Construction Program," dated 12/90, as set forth in subsection (b). This form is provided by the department.
- (b) HCD 800, "Loan Application Rental Housing Construction Program," dated 12/90:
- (c) An application shall be deemed complete when the department is able to determine from the information provided whether the project is eligible for rating and ranking pursuant to the requirements of section 8095(a).

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Sections 50736 and 50771.1, Health and Safety Code.

#### Section 8095. Project Selection.

- (a) Projects shall not be eligible for rating and ranking unless the application demonstrates that all of the following conditions exist:
  - (1) The applicant is an eligible sponsor pursuant to section 8078;
  - (2) The project involves an eligible project pursuant to section 8077;
  - (3) All proposed uses of program funds are eligible pursuant to section 8079;
  - (4) The application is complete pursuant to section 8094;



- (5) The project will maintain fiscal integrity consistent with affordable rents in the assisted units.
  - (6) The project site is free from severe adverse environmental conditions, such as the presence of toxic waste that is economically infeasible to remove, that cannot be mitigated and is reasonably accessible to public transportation, shopping, medical services, recreation, schools, and employment in relation to the needs of the project tenants.
  - (7) In projects targeting households in need of any direct or supportive tenant services, the project provides those services suitable to the needs of the tenants.
- (b) Projects shall not be denied funding solely because projected operating income is insufficient to make interest payments on the program loan.
- (c) Where the application meets the requirements of subdivision (a), the proposed project will be rated to determine its compliance with the following priority requirements. The application must receive a minimum of 60 percent of the total possible priority points in order to qualify for funding. Applications receiving 60 percent or more of the total possible points shall be ranked based on their point scores, with applications scoring higher receiving a higher ranking. Applications shall be eligible to receive commitments of available funds in a priority order based on their ranking. If criterion (2) is not applicable to the proposed project, the total number of points possible will be reduced by the number of points in that criterion; and the 60 percent will be calculated on the reduced maximum possible points. The maximum score for each of the following seven criteria is 10:
- (1) The extent to which the project maximizes program benefits to eligible households with the lowest incomes as evidenced by the following:
    - (A) The sum of the number of very low-income units and the number of very low-income nonassisted units, divided by the total number of assisted units.
    - (B) The proposed length of term of the program regulatory agreement, in excess of the program's minimum regulatory requirement.
  - (2) The number of assisted units with three or more bedrooms, divided by the total number of assisted units, (not applicable to residential hotels).
  - (3) Need, in the area, of the proposed project as approved by the department for the type of housing provided by the proposed project. The department shall issue an evaluation of need for market areas within California based on the criteria listed below. The sponsor in its application may submit other or additional information and data to rebut or supplement the department's evaluation with respect to the need within the individual project's area. Where

the department determines that the sponsor's data provides a more accurate evaluation of need, it shall base its rating on such data.

- (A) Low vacancy rate for rental housing
  - (B) Typical local market-rate rents as a high percentage of the income limit for very low-income households. The income limit for very low-income households is provided in section 6932 pursuant to Health and Safety Code section 50105. For example, in Sacramento County the typical market-rate rent for a three-bedroom rental is \$750., while the monthly income for a very low-income family of four is \$1,562.50. Such a family will pay 48% of their income to rent such a dwelling unit. Since affordable rent is set at 25% of income pursuant to section 6922 of Title 25, 48% of income is high.
  - (C) Length of wait for units in comparable subsidized housing developments.
  - (D) High rental housing development costs, in comparison to costs in other areas of the state.
- (4) The extent to which the proposed project complements the implementation of an existing housing program in the local agency in which the proposed project is located. "Local agency" means the same as defined in section 50077 of the Health and Safety Code. Points shall be allocated based upon the following criteria:
- (A) The extent to which the local agency has an existing housing program, such as a housing element in compliance with the requirements of Article 10.6, commencing with section 65580, of Chapter 3, Division 1 of Title 7. of the Government Code, or a similar plan or policy formally considered by the local city council or board of supervisors. A plan or policy shall ordinarily be deemed to be similar based upon the extent to which it addresses affordable housing issues such as the following: an assessment of need in the area and an inventory of resources and any constraints on those resources; a statement of the community's goals, objectives and policies relative to the maintenance, preservation, improvement and development of housing; a program which sets forth a schedule of actions which the local government has undertaken, is undertaking and intends to undertake to implement these goals; and a program for preserving existing assisted housing developments. Examples of actions which a local government may have taken, is taking, or may intend to take in implementing the community's goals, objectives and policies include the following: demonstrated performance in support of the development of affordable housing; utilization of federal, state, and local financing and subsidy

programs; land use development controls; and regulatory provisions, concessions and incentives.

- (B) The extent to which the local agency is providing, or could provide, financial or nonfinancial assistance to the applicant's project. Financial assistance is defined as assistance that is equal to at least five percent of the project development cost, excluding any costs of tax-credit syndication, or \$250,000, whichever is less. Nonfinancial assistance includes forms of assistance such as the granting of density bonuses, the modification of development standards, and the fast tracking of local approvals, but does not include simply the provision of technical assistance, consultation or advice.
- (5) The program loan amount divided by the sum of the total development cost of all assisted units and lower income nonassisted units. Total development cost does not include any costs of tax-credit syndication.
- (6) The degree of the project's economic feasibility, as demonstrated by the following:
  - (A) The capacity of the applicant, including its board, staff and any consultants, as evidenced by previous development and ownership experience with residential projects and by the applicant's financial, operational and organizational stability.
  - (B) The readiness of the project to start construction as evidenced by the status of local development approvals and project financing commitments.
- (7) The applicant's budget for construction and construction-related expenses, such as architectural, building permit, and local development fees, divided by typical costs for the same sized project, as estimated by the department.

Maximum possible points

70

Authority cited: Section 50771.1, Health and Safety Code. Reference: Sections 50735 and 50771.1, Health and Safety Code.

## Article 4. Program Operations

### Section 8096. Legal Documents.

- (a) The department shall enter into a Standard Agreement with the sponsor which shall encumber monies from the fund in an amount sufficient to fund the approved loan amount. The Standard Agreement shall contain the following:
  - (1) A description of the approved project and the permitted uses of program funds;
  - (2) provisions governing the amount and terms of the loan;
  - (3) provisions regarding the regulatory restrictions to be applied to the project through the Regulatory Agreement;
  - (4) provisions governing the construction work and, as applicable, the acquisition of the project site, and the disbursement of loan proceeds;
  - (5) special conditions imposed as part of department approval of the project;
  - (6) requirements for the execution and the recordation of the agreements and documents required under the program;
  - (7) terms and conditions required by federal or state law;
  - (8) requirements regarding the establishment of escrow accounts for the deposit of documents and the disbursement of loan proceeds;
  - (9) remedies available to the department in the event of a violation, breach, or default of the Standard Agreement to ensure compliance with program requirements for the full term of the Regulatory Agreement, including repayment of all costs of enforcement;
  - (10) other provisions necessary to ensure compliance with the requirements of this program.
- (b) The department shall enter into a Development Agreement with the sponsor which shall be executed prior to the disbursement of funds to the sponsor, govern the performance of the project, and include the following:
  - (1) The approved schedule of the project, including land acquisition, if any, commencement and completion of construction work, and occupancy by eligible households;

- (2) provisions ensuring that the construction contract is consistent with section 8092 and other program requirements and that all financing agreements are consistent with program requirements;
  - (3) the approved budget for construction work, land acquisition and other project costs, if applicable;
  - (4) provisions relating to fund disbursement;
  - (5) provisions relating to acquisition agreements, preparation of construction specifications, bidding, awards to contractors, and disbursement of funds to contractors, or others;
  - (6) requirements for reporting to the department;
  - (7) terms and conditions for the inspection and monitoring of the project in order to verify compliance with the Standard Agreement and this agreement;
  - (8) provisions regarding tenant relocation;
  - (9) bonding and insurance requirements consistent with the requirements of this subchapter;
  - (10) conditions constituting breach of the Development Agreement and remedies available to the parties thereto, including repayment of costs of enforcement;
  - (11) a requirement that the contractor comply with state prevailing wage law, as set forth in Labor Code section 1720 et seq., where program funds are provided as construction financing; and
  - (12) other provisions necessary to ensure compliance with the requirements of this program.
- (c) The department shall enter into a Regulatory Agreement with the sponsor for not less than the original term of the loan which shall be recorded against the project property prior to the disbursement of funds. The Regulatory Agreement shall include the following:
- (1) designation of the number and type of assisted units pursuant to section 8086;
  - (2) standards for tenant selection pursuant to section 8087(a);
  - (3) provisions regulating the terms of the rental agreement pursuant to section 8087(c);
  - (4) provisions related to an annual budget approved by the department pursuant to section 8102;

- (5) provisions related to a management plan pursuant to section 8100;
  - (6) provisions related to a rent schedule, including initial rent levels for assisted and nonassisted units pursuant to section 8088(a);
  - (7) conditions and procedures for permitting rent increases pursuant to section 8088(b);
  - (8) provisions for limitations on distributions pursuant to section 8089;
  - (9) provision requiring annual reports, inspections and audits pursuant to section 8101;
  - (10) provisions regarding the withdrawal of funds from reserve accounts and additional payments by the department;
  - (11) assurances that sponsor will maintain the rental housing development in a safe and sanitary condition in compliance with state and local housing codes and the management plan pursuant to section 8100;
  - (12) conditions constituting breach of the Regulatory Agreement and remedies available to the parties thereto;
  - (13) provisions governing use and operation of nonassisted units and common areas to the extent necessary to ensure compliance with program requirements;
  - (14) provisions authorizing enforcement of program requirements by tenants;
  - (15) special conditions of loan approval imposed by the department;
  - (16) provisions specifying that the Regulatory Agreement shall be binding on all assigns and successors in interest of the sponsor and that all sales, transfers, and encumbrances shall be subject to section 8099; and
  - (17) other provisions necessary to assure compliance with the requirements of the program.
- (d) All loans shall be evidenced by a promissory note payable to the department in the principal amount of the loan and stating the terms of the loan consistent with the requirements of the program. The note shall be secured by a deed of trust on the project property naming the department as beneficiary or by other security acceptable to the department; this deed of trust or other security shall be recorded junior only to such liens, encumbrances and other matters of record approved by the department and shall secure the department's financial interest in the project and the performance of sponsor's program obligations.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Sections 50771.1 and 53130, Health and Safety Code.

Section 8097. Disbursement of Loan Funds.

- (a) The sponsor shall request funds from the department for actual expenditures in accordance with the schedule and the authorized amounts in the approved project budget in the Development Agreement. The information on any request for funds shall be subject to verification by the department. Requests shall be made on form HCD 810, "Request for Funds," 12/89, as set forth in subsection (b). This form is provided by the department.
- (b) Text of form HCD 810, "Request for Funds," dated 12/89:

HCD 810, 12/89  
RENTAL HOUSING CONSTRUCTION PROGRAM  
REQUEST FOR FUNDS #

1. BORROWER (Payee):

2. ADDRESS:

3. CONTRACT NUMBER:

4. TOTAL

APPROVED LOAN AMOUNT	AMOUNT PER THIS REQUEST	PREVIOUSLY APPROVED	AMOUNT BALANCE
\$	\$	\$	\$

5. USE OF FUNDS REQUESTED: (Specify line items per Development Agreement Budget.)

\$  
\$  
\$  
\$

6. DRAW CHECK IN TOTAL AMOUNT OF: \$

7. SEND CHECK TO: Department of Housing and Community Development  
Accounting Office  
P.O. Box 952050  
Sacramento, CA 94252-2050

8. CERTIFICATION: I, the undersigned, do hereby certify that (1) the funds requested above will be used only in accordance with the above numbered State Standard Agreement and the Development Agreement entered into pursuant to this Standard Agreement, and only for eligible costs, as specified in the RHCP regulations; and (2) the Borrower and the project are in full compliance with the Standard Agreement, the Development Agreement, and all other agreements by and between the Borrower and the Department of Housing and Community Development entered into pursuant to the Standard Agreement.

Signed:

Title:

Date:

-----DO NOT WRITE BELOW THIS LINE-----  
The work performed for which this request for disbursement is presented is in accordance with all provisions of Contract Number \_\_\_\_\_ between \_\_\_\_\_ and the Department of Housing and Community Development, and is hereby approved for payment.

Program Manager: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_



- (c) Prior to the disbursement of funds, the sponsor shall provide or execute all required documents which the department determines are necessary to verify the claimed expenditure
- (d) The department may enter into agreements with other lenders or public or private entities to disburse funds and monitor construction and may make direct payments to such third party contractors on behalf of sponsors.
- (e)
  - (1) If a sponsor is a nonprofit corporation or a government entity, the department may disburse an initial advance payment subject to the following conditions:
    - (A) any required documents are executed by the sponsor;
    - (B) the sponsor is in compliance with all applicable conditions for the advance of funds;
    - (C) the sponsor submits a "Request for Funds"; and
    - (D) the sponsor certifies that it does not have adequate funds to commence the project.
  - (2) The advance payment shall not exceed 25 percent of the approved administrative costs.
  - (3) All disbursements subject to the initial advance shall be made only to pay for costs incurred.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Section 50711.1, Health and Safety Code.

#### Section 8098. Sales, Transfers, and Encumbrances

- (a) A sponsor shall sell, assign, transfer, or convey the rental housing development, nor any interest therein or portion thereof, without the express prior written approval of the department.
  - (1) the existing sponsor is in compliance with the Regulatory Agreement or the sale, transfer or conveyance will result in the cure of any existing violations;
  - (2) the successor-in-interest to the sponsor agrees to assume all obligations of the existing sponsor pursuant to the Regulatory Agreement and this program;
  - (3) the successor-in-interest is an eligible sponsor and demonstrates to the department's satisfaction that it can successfully own and operate the rental housing development and comply with all program requirements; and

- (4) no terms of the sale, transfer or conveyance jeopardize either the department's security or the successor's ability to comply with all program requirements.
- (b) The department shall grant its approval of such sale, assignment, transfer, or conveyance subject to such terms and conditions as may be necessary to preserve or establish the fiscal integrity of the project. Such conditions shall include:
  - (1) the deposit of sales proceeds, or a portion thereof, to maintain required reserves, or to offset negative cash flow;
  - (2) the recapture of syndication proceeds or other funds in accordance with special conditions included in the Standard Agreement or any other agreement executed by the sponsor;  
such conditions as may be necessary to ensure compliance with the program requirements.
- (c) The sponsor shall not encumber, pledge, or hypothecate the rental housing development, or any interest therein or portion thereof, or allow any lien, charge, or assessment against the rental housing development without the prior written approval of the department. The department may permit refinancing of existing liens or additional financing secured by the rental housing development to the extent necessary to maintain or improve the fiscal integrity of the project, to maintain affordable rents, or to decrease rents.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Section 50771.1, Health and Safety Code.

Section 8099. Defaults and Loan Cancellations.

- (a) In the event of a breach or violation by the sponsor of any of the, provisions of the Regulatory Agreement, the Standard Agreement, the Development Agreement, the promissory note, or the deed of trust, or any other agreement pertaining to the project, the department may give written notice to the sponsor to cure the breach or violation within A period of not less than 15 days. If the breach or violation is not cured to the satisfaction of the department within the specified time period, the department, at its option, may declare a default under the relevant document and may seek legal remedies for the default including the following:
  - (1) The department may accelerate all amounts, including outstanding principal and interest, due under the loan and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the department may proceed with a foreclosure in accordance with the provisions of the deed of trust and state law regarding foreclosures.
  - (2) The department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the project or operate the rental housing development in accordance with program requirements.

- (3) The department may seek such other remedies as may be available under the relevant agreement or any law.
- (b) In the event that the breach or violation involves charging tenants rent or other charges in excess of those permitted under the Regulatory Agreement, the department may demand the return of such excess rents or other charges to the affected households. In any action to enforce the provisions of the Regulatory Agreement, the department may seek as additional remedy, the repayment of such overcharges.
- (c) Loan commitments may be canceled by the department under any of the following conditions:
  - (1) the objectives and requirements of the program cannot be met;
  - (2) implementation cannot proceed in a timely fashion in accordance with the approved plans and schedules;
  - (3) special conditions have not been fulfilled within required time periods;
  - (4) the construction work has not commenced within one year of the date of loan approval;
  - (5) there has been a material change in the principals or management of the sponsor or project, which was not approved by the department.

The department, in writing and upon demonstration by the sponsor of good cause, may extend the date for compliance with any of the conditions in this subdivision.

- (d) Upon receipt of a notice of intent to cancel the loan from the department, the sponsor shall have the right to appeal to the Director.
- (e) The department may use amounts available in the fund pursuant to section 8103(b) for the purpose of curing, or avoiding, a sponsor's defaults on the terms of any loan or other obligation which jeopardize completion of construction, the fiscal integrity of a project or the department's security in the project. Such defaults include defaults or impending defaults in payments on mortgages, failures to pay taxes, or failures to maintain insurance or required operating reserves. The payment or advance of funds by the department pursuant to this subdivision shall be solely within the discretion of the department and no sponsor shall be entitled to or have any right to payment of these funds. All funds so advanced shall be part of the program loan to the sponsor and, upon demand, due and payable to the department. Where it becomes necessary to use the fund for the purpose of assisting a project to

avoid threatened defaults or foreclosures, the department shall take those actions necessary, including, but not limited to, foreclosure or forced sale of the project property, to prevent similar occurrences and insure compliance with the terms of the applicable agreements.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Section 50771.1, Health and Safety Code.

Section 8100. Management and Maintenance.

- (a) The sponsor shall be responsible for all management functions of the rental housing development including selection of the tenants, annual recertification of household income and size, evictions, and collection of rent.
- (b) The sponsor is responsible for all repair and maintenance functions of the rental housing development, including ordinary maintenance and replacement of capital items. The sponsor shall maintain residential units, commercial space and common areas in accordance with local health, building, and housing codes and the management plan.
- (c) The sponsor, with the prior approval of the department, may contract with a management agent for the performance of the services or duties required in subdivision (a) and (b). However, such an arrangement does not relieve the sponsor of responsibility for proper performance of these duties. Such contract shall be subject to Department approval and contain a provision allowing the sponsor to terminate the contract upon thirty days' notice. The sponsor shall terminate said contract as directed by the department upon determination that management does not comply with program requirements.
- (d) The sponsor shall develop a management plan subject to department approval prior to loan closing. The plan shall be consistent with this subchapter and shall include the following:
  - (1) the role, and responsibility of the sponsor and its delegation of authority, if any, to the managing agent;
  - (2) personnel policy and staffing arrangements;
  - (3) plans and procedures. for publicizing and achieving early and continued occupancy;
  - (4) procedures for determining tenant eligibility and for certifying and annually recertifying household income and size;
  - (5) plans for carrying out an effective maintenance and repair program;
  - (6) rent collection policies and procedures;

- (7) program for maintaining adequate accounting records and handling necessary forms and vouchers;
- (8) plans for enhancing tenant-management relations;
- (9) management agreement, if any;
- (10) description of direct or supportive tenant services, if any;
- (11) provisions for periodic update of management plan;
- (12) for limited equity housing cooperatives, plans for board and member training and education;
- (13) appeal and grievance procedures;
- (14) plans for collections for tenant-caused damages;
- (15) plans for processing evictions and termination; and
- (16) equal opportunity provisions that apply to hiring and renting.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Sections 50736 and 50771.1, Health and Safety Code.

Section 8101. Reporting.

- (a) No later than 90 days after the end of each fiscal year, the sponsor shall report to the department on form HCD 820, "RHCP Annual Sponsor Certification," 12/89, as set forth in subsection (c). This form is provided by the department.
- (b) As part of the annual report, the sponsor shall submit an audit of the rental housing development prepared in accordance with generally accepted auditing standards by a certified public accountant. Upon a determination that the cost of meeting this requirement exceeds the potential benefits from it to the department and to the tenants of the rental housing development, the department shall
  - (1) reduce the required frequency of the audit;
  - (2) accept an audited financial statement in lieu of the audit; or
  - (3) waive this requirement completely.
- (c) copy of form HCD 820, "RHCP Annual Sponsor Certification," dated 12/89:

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Section 50771.1, Health and Safety Code.

Section 8102. Operating Budget.

- (a) Prior to loan closing, the sponsor shall provide the department an initial operating budget for its approval. Such budget shall show all anticipated income, expenses for management, operations, and maintenance, debt service and reserve deposits for the initial operating year.
- (b) Sixty days prior to the end of each fiscal year, the sponsor shall submit to the department a proposed operating budget for its approval. The proposed operating budget shall set forth the sponsor's estimate of the project's operating income, operating expenses, debt service for the upcoming year, and any proposed rent increases pursuant to section 8088.
- (c) The initial and subsequent proposed operating budgets shall be subject to the approval of the department based on its determination that the budget line items are reasonable and necessary in light of costs for comparable rental housing developments and prior year budgets. Actual expenditures in excess of the approved budget amount shall be subject to department approval.
- (d) The initial operating budget and subsequent proposed operating budgets shall include periodic deposits to:
  - (1) A replacement reserve account for capital improvements such as replacing structural elements, furniture, fixtures, or equipment of the rental housing development which are reasonably required to preserve the project; and
  - (2) an operating reserve account in an amount sufficient to offset potential operating shortfalls.
- (e) Upon initial occupancy, the amount in the operating reserve account shall be at least one percent of total project development costs.
- (f) For projects with nonassisted units or commercial space, all budgets submitted pursuant to this section shall show income and uses of income allocated among assisted units, nonassisted units, and commercial space. The allocation method used for each budget line item shall be subject to department approval, and shall apportion income and expenses in a manner that accurately reflects the particular physical, operational and economic characteristics of the project.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Section 50771.1, Health and Safety Code.

Section 8103. Emergency Reserve Account.

- (a) The department shall establish an emergency reserve account in the fund. Three percent of any allocation made to the fund pursuant to Health and Safety Code section 53130(a) shall be deposited into the account. Excess funds returned to the department pursuant to section 8089(i) shall be deposited into the account to replace the allocated funds in the account on a dollar for dollar basis. Allocated funds so replaced shall become available for loans provided pursuant to this subchapter.
- (b) The department shall maintain a default reserve as a portion of the emergency reserve account, in an amount equal to two percent of all allocations to the fund pursuant to Health and Safety Code section 53130(a), for the purpose of avoiding or curing defaults pursuant to section 8099(e).
- (c) When funds in the account exceed the two percent default reserve required pursuant to subdivision (b), the department shall advance funds from the account to defray unanticipated cost increases or revenue shortfalls to the extent necessary to preserve fiscal integrity and to maintain rents in accordance with program requirements. All funds so advanced shall be part of the program loan to the sponsor and subject to the same interest rate and terms of repayment.

NOTE: Authority cited: Section 50771.1, Health and Safety Code. Reference: Section 50771.1 and 53130, Health and Safety Code.